

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>4/18/13</u>
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CHARLES SCHWAB & CO., INC.,

Plaintiff,

-v-

DAVID HANFORD,

Defendant.

13 Civ. 1122 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

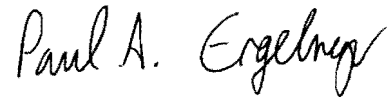
The Court has received a letter from plaintiff, dated April 9, 2013, seeking an order compelling production of an iPhone allegedly used by defendant. Dkt. 21. The Court has also received a letter from defendant, dated April 15, 2013, representing that the iPhone at issue is not within defendant's custody or control. Dkt. 22.

In the event the defendant possesses the iPhone, he is directed to produce it forthwith to plaintiff. The defendant is also directed to take all steps available to preserve the iPhone and its contents.

Plaintiff may, of course, inquire about the iPhone's whereabouts at defendant's upcoming deposition, and in the event the iPhone has not been produced, the Court expects that plaintiff may do so. If, following defendant's testimony, plaintiff believes there is a basis for seeking production of the iPhone, the Court will entertain an application for an order compelling its production at that time. If the iPhone is eventually produced and its contents merit additional inquiries of the defendants, the Court will entertain a request by plaintiff for another deposition

of defendant. In that situation, the Court will entertain an application to shift costs relating to the second deposition to the defendant.

SO ORDERED.

A handwritten signature in black ink, reading "Paul A. Engelmayer". The signature is written in a cursive, flowing style.

Paul A. Engelmayer
United States District Judge

Dated: April 17, 2013
New York, New York